

N^o 11

Lex Pacifica:

O R
GODS OWN LAW
O F

Determining Controversies

Explain'd and asserted, in

A SERMON

Preached at *Dorchester*, at the Assizes
holden there for the County of *Dorset*,
August 5. 1664.

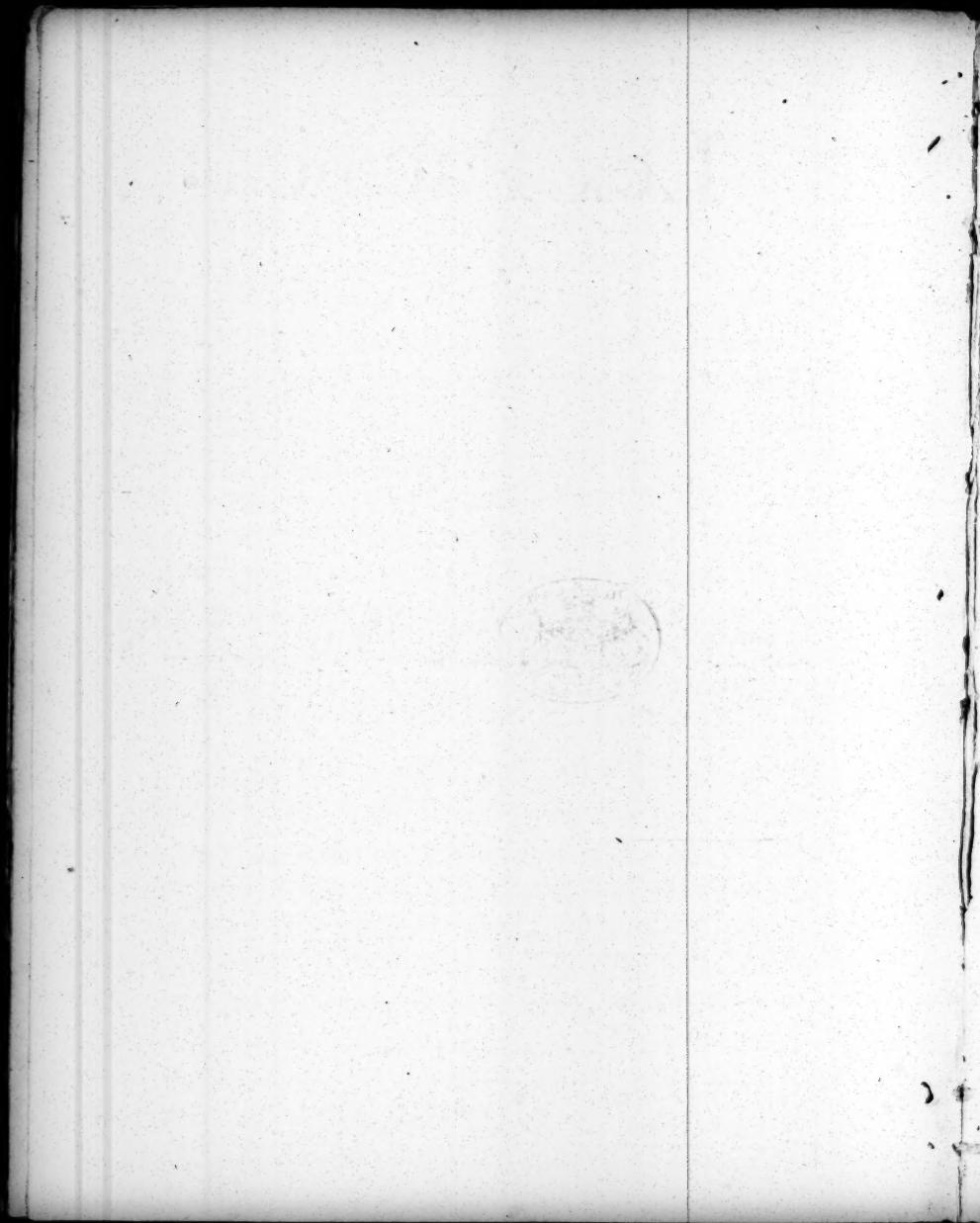
By JOHN MARTIN, Rector of
Horsey's Melcombe.

James 3. 18.

— *The fruit of righteousness is sown in peace of them that make peace.*

L O N D O N,
Printed by J. G. for Richard Royston, at the Angel in *Ivie-lane*.

1664. 

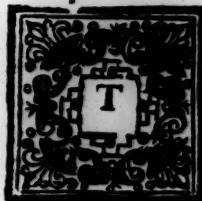


To the Honourable,
Sir Matthew Hale Knight, Lord Chief
Justice of His Majesty's Court of Exchequer; and

Sir John Archer Knight, one of His
Majesty's Justices of the Court of Common Pleas;
Judges for the Western Circuit: And

To the Right Worshipful,
Thomas Freke Esquire, High Sheriff of
the County of Dorset; together with the Right
Worshipful, His Majesty's Justices of the Peace
in that County.

My Lords and Honourable Gentlemen,



Is not any fond Conceit (bred and
encouraged from your accep-
tance of this Discourse) that
hath made me entitle the Re-
spect of it to so Honourable
and numerous a Partage. The
publick Address of it (had I esteemed my self
wholly free) must have directed it self (the du-
ty of a Chaplain obliging me) onely to Master
Sheriff; whose noble and prudent Deportment
in the face of his Countrey, cannot but justifie
as well as challenge a property of Homage from
others, besides his known Dependents. But as by

Master Sheriffs command (the onely Person, I think, that could have set me that task) I became (at first) engaged to the Pulpit; so can I not think my self acquitted from that obligation, by preaching a maim'd Sermon to so Reverend and Judicious an Auditory.

2 Sam. 4.4.

We read of Mephibosheth, that When tidings came of Saul and Jonathan out of Jezreel, that his Nurse took him up, and making haste to flee, he fell, and became lame. The like misfortune (a truth which every one then observed not) happened unto this Discourse, by the haste I made upon strict commands to shorten your trouble, (though the tongues of Gainsayers may (sometimes) as hastily be fled from, as the swords of Philistines) this Discourse became lame; and I knew no better remedy for its halting, (at least no other satisfaction of Master Sheriffs last Injunction) than to present it to my Honourable and Learned Auditors upon its legs: which, if not so clean and becoming as Orators may expect, nor so firm and sinewed as Divines may require; yet may they be fit enough to go of an errand of Charity to my Christian Brethren, and to bring home your pardon for this (but) necessary piece of boldness in,

*My Lords and Honourable Gentlemen,
Your meaneſt and humbleſt Servant,
JOHN MARTIN.*

Lex Pacifica :

Or

Gods own Law of Determining Controversies explain'd and asserted.

Deut. 17. 12.

— And that man that will do presumptuously, and will not hearken unto the Priest (that standeth to minister there before the Lord thy God) or unto the Judges ; even that man shall dye, and thou shalt put away the evill from Israel.



Hat there might be (for this time) some alliance betwixt the Bench and the Pulpit, I have read for my Text this recapitulatorie branch of one of Moses Laws ; of that kind, Divines have commonly styl'd, the Judicial Laws : The Scripture by a Metonymy calls them Judgements, because they are such Laws as God himself appointed unto the Jews, to be dispensed out in Acts of legal Justice ; for Judgement is the Act of justice in particular cases, per modum a D: Iustit. & cause prcipientis & obligantis, says a Lefsius: as flowing from a cause, commanding and obliging to the exercise of such Acts.

D: Iustit. &
Fure, lib. 2. c.
29. Dabit. .
n. 4. Idem A-
quum. & Sol. &
al i.

Re-

2
Gods own Law

Reduceable they are unto four heads. First, such as instructed the *Magistrates* in their duty towards the *People*. Secondly, such as taught the *People* their duty towards the *Magistrates*, and of one man towards another. A third sort inform'd them, how to demean themselves towards *Strangers*. And a fourth kind directed them in the *Domestick* duties of their *private Families*. The *Division* duly considered, shews the excellency of the *Jewish Policie*, in that the *body* of their *Laws* extended to all the *Eminent parts*, and *orders* of *Society*.

The *Obligation* of these *Laws* (as delivered by *Moses*) is by *Divines* usually affirm'd, not to *reach* unto us *Christians*: the reason is, because they are *Positive Laws*; and *Positive Laws*, though given by *God himself*, oblige only *that People* unto whom they are given; it being the *sole* prerogative of *Innate Law*, (that is, of the *Law of Nature*) to lay a *common Obligation* upon *all Mankind*.

De *ennis episcopis-*
u. 7.
But forasmuch as that same is an undoubted truth which *Tertullian* speaks in his book of *Single marriage*, [*qua adjustitiam spectant, non tantum reservata permaneant, verum & ampliata*;] *Christians* are not only bound to equal, but to exceed, all others in matters of justice and honesty, (agreeable to our *Saviours* [*ταντούων*] in *Mat. 5. 17.*)

5 H. Spelman,
circ. an. Chr.
887. in Concil.
Britan.
And being these *Laws* have ever been had in great veneration in the *Church of Christ*, wise and virtuous *Princes* having made them their *Patern* for *Laws*, as appears by the *Preamble* to our own King *Alfred's Saxon Laws*:

And forasmuch as *Divines* have recourse unto these *Laws*, in *debates*, and for *resolution* of many weighty points, as of *Marriage* within *prohibited degrees*, *pay-ment of Tithes*, *Usury*, and some others; there be these

these three *Corollaries* that depend thereon.

First, that many of these *Judicial Laws* are Conclusions, evidently deduc'd from the *Law of Nature*; and are very apposit and suitable to *Ecclesiastical* and *Civil Government*, as well *now* amongst *Christians*, as formerly amongst the People of the *Jews*; and

Secondly, that for that reason, such of them as shall be by *Supreme Authority* judg'd fit, may be *assum'd*, either among the *statutes* *canonicas*, (as *d. Antiochenus* styles ^{d. In prefat. ad} them) the *Divine Canons* of the *Church*, or the *Decreta Comitiorum* (as we term them) the *Statute-laws* of *Civil Government*. ^{Collect. Canon.}

And thirdly, that such of them as shall be so *re-invested* with the *force* of *Law*, will be *reducible* to that kind of *Laws*, which some *Divines* have rightly styl'd *leges partim declarativae, & partim constitutiva*e ^{e. Suar. 2. de leg.} ^{l. 3. c. 14. n. 4.} *laws partly declarative, and partly constitutive: declarative*, in respect of the *matter* of them, as having been the *subject* of some *former Law*; and *constitutive* in regard of their *present power to oblige*, imprinted on them by the *Authority* and *will* of the *Law-giver*. The *obligation* of which *Laws*, that it is in the *conscience* of the *subject* (and by *consequence* a *sin* not to obey) no man without affronting *Nature* and *Religion* can deny.

And upon this *foundation*, I shall by Gods assistance *superstruct* a *disquisition* of these three *Particulars*, as the *heads* of my following discourse.

First, what the *tenour* and *purport* of this *Judicial Law* is, of which we treat.

Secondly, whether this *Law* may be *revived* by *supreme Authority*. And

Thirdly, whether there be not either *formally* or *equivalently*, the like *Law* in this *Church* and *State* in which we live.

f Diog. Laert.
lib. 10.

In the prosecution of these, I shall crave leave to follow the Counsel of Epicurus in f *Laertius* [ιδε προφέατε, νανος,] not to present you with the *Flowers of Rhetorick*; to be more careful to garnish the *Dish*, than to season the *meat*; especially for such an *Auditory*, whose *parts and callings* must needs furnish them with abilities, to concoct far more *solid* matter and *learning* than can be expected from my *very Ordinary* skill and capacity.

2. First then, concerning the *tenour and purport of this Judicial Law.*

I.

And here if my *Obligation* to discourse of this particular Law, would permit me to speak of Laws *in general*, amongst many other things, that might be said, I should not omit to take notice of the opinion the *Heathens* themselves had of the *Sacredness*, and of the *Necessity* of Laws. Of the *Sacredness* of Laws, in that the prime *Heathen Lawgivers* endeavoured to perswade the people that their Laws were of *Divine extraction*; Amongst the *Greeks*, *Minos* feign'd to have receiv'd his Laws from *Jupiter*; *Lycurgus*, his from *Apollo*; and g Strom. lib. 11. p. 352. *Zaleucus*, his from *Minerva*; as g *Clemens Alexandrinus* tells us: and for the *Romans*, *Numa Pompilius* his fam'd addresses to the *Goddes Egeria* for instructions in making of Laws, are notorious to all; Foreseeing h Curtius 1. 8. belike the importance of *that truth*, the h *Historian* acutely observes, as the reason why the *Persians* were wont to *deify* their *Kings*; *Majestatem imperii salutis*

i Euseb. *Xenov. ap. p. 19. vid. Sca.*
Animad. p. 19.

k Lib. 32.

l *Phoroneus Moys. Antiquior* 300.
an. Sic Euseb. & Aug. docent; cum
samen placuerunt regna *Assyr. Ar-*
gypt. sed Regna legibus priore.
Liv. 1. 3. Just. 1. 1. &c.

esse tutelam; their opinion of the *Necessity* of Laws is inferr'd from their conceit, that i *Phoroneus*, whom they fancied to be the *first Lawgiver*, was likewise the *first man*; ταῦτα διηγεῖται οὐντος ἀρχέτονος, & ἀρχέτορος, (as k *Noronus* calls him) as if all that lived before him had not been men

Of determining Controversies.

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for want of Laws ; (what think you would they have thought of them, who will not live like men under just Laws ?)

But the due regard of *method* having confin'd me within narrower bounds, I shall in as few words as conveniently I may, endeavour fully to explain this Law, by insisting on these four particulars, or *integral* parts of Law. 1. *Interdictum*. 2. *Censura*. 3. *Sanctio*. 4. *Ratio finalis legis*.

The $\begin{cases} 1. \text{Interdict.} \\ 2. \text{Censure.} \end{cases}$ $\begin{cases} 3. \text{Sanction, and} \\ 4. \text{Final Reason} \end{cases}$ of this Law.

1. The *Interdict* of this Law is this, That if it hapned, either through the *ambiguity of words*, or *exception of cases*, that there arose any *doubt* of the *extent*, or *meaning* of any *Judicial*, or *Ceremonial Law*, in *inferior* or *local Courts of Judicature*, the *Question* was to be brought before the great *Sanhedrin*, or *Council of Jerusalem* : and there a *definitive Sentence* being made, all both *Judges* and *Litigants* were *bonnd* under *pain of death*, not to *reject* and *contradict* the same; but it was to be put upon *Record*, as a *Rule* in such *cases* for the future.

To make this more plain, we will suppose a *Case* that may be easily conceived to arise, out of the Law of their *Levites*, or *second Tithing*, *Deut. 14. 22.* The words of the Law are these, [Thou shalt truly tithe all the increase of thy seed, that thy field bringeth forth year by year.] Upon this Law it might be doubted, whether by a *direct consequence* drawn from this Law, the *Jews* were not bound to pay unto the *Levites*, in their *first tithing*, the *tenths* of all such things as grew in their *Gardens*. The reasons of which doubt may be, First, for that *prudent* men might conceive, that the Law intended *no more*, but a *fit maintenance* for the *Priests* and *Levites* ; unto which such *small* things would

would but little conduce; and therefore that they were not included in the Law for *Payment of Tithes*. And secondly, because by the uncertainty of their *estimation*, they might raise *contentions* betwixt the *Priests* and the *People*; or occasion unnecessary *scruples* in mens *consciences*, and thereby introduce that *posthumous* way of expiating *involuntary Sacrilege* by *Mortuaries*, as amongst us. And thirdly, because the word שָׂדֶה in the Law, which is rendred a *field*, is sometimes (though but *seldom*) found to signify a *Garden*.

Now if the great *Sanhedrin* at *Jerusalem* should determine, that the *Jews* were bound to pay *Tithes* of those *minute* things which grew in their *Gardens*, the *People* were oblig'd by *virtue* of this Law in the *Text*, to submit their practise unto that *Decree*; and if upon *pretence* of *error* therein, some חכָרִים some *contumacious Doctor* (as the *Jews* call'd him) the same with the Αταξιας διδασκαλος, in the *m* *Apostles Canons*, should factiously oppose the same, such a one was (by this Law) to be put to *death*.

: *Geor. ad Loc.*
in *Can. 16.*

n Lib. de Prin.

o Advers. Ap.

uv. 2.

p In Chron. O *dures της Ιουδαιας*
ρημαδεις κατα παρισιων ζενωνας
πεικτεινει, idem Baron. ex Phil. l.
2. de Temp. De hujus libri autoritate
wid. Baron. ad An. Ch. 1. p. 83. n. 20
Plant. & ad An. Chr. 32. p. 343.

This Council at Jerusalem was the same with that the *Text* styles [the *Priest*, or the *Judge*] for in the *ancient* state of that Government (as *n* *Philo* and *o* *Josephus* tell us) ἐποιει τάρτων καὶ δικαιαὶ ἐποιεῖντες πόνον, the *Priests* had the *bearing* and *determining* of all *controversies*, in the ordinary way of *Judging* ; which course (as *p* *Eusebius* notes) was observed among them, (though not without some *mixture* of the *Laity*) till the reign of *Herod the Great*: in whose time the *Scepter* being about to depart from *Judah*, (the *authority* whereof had been till then pre-

q p. 10. n. 35. served in this *Sanhedrin*, and the *Assamona*; and *q Baronius* in his *Apparatus* shews you how) *Herod*, I say, upon

upon reasons of *State* slew them all but one, and substituted a Council of Proselytes in their stead.

Let no man think that the Tribe of *Levi*, either took too much upon them, or had too much conferr'd upon them, by this honour of *Judicature*; it was no more than the *Heathen-world* bestowed upon their ignorant and *Idolatrous* Priests; for the *Ethiopians*, ^r*Strabo*, ^{1 Lib. 17.} for the *Egyptians*, ^s*Aelian*; for the *Persians*, ^t*Eusebius*, ^{1 Lib. 24.} for the *Athenians*, ^u*Josephus*; for the *Gauls* and *Britains*, ^v*Pliny the chron.* ^{1 Lib. 14. Act.} for the *Romans*, ^x*Casar*; for the *Romans*, ^y*Cicero*, are authentick ^{x Lib. 6.} ^{y Lib. 2 d. legib.} witnessses.

Nor was the *Impostor Mahomet* wanting to the reputation and advantages of his Religion by the like design: whose Priests always fit with the secular Magistrates; their *Alcoran* or Scripture (after the manner of the ancient *Councils*) lying before them; as if all were done by an infallible rule, and the judgment were Gods.

But it almost exceeds belief, in what veneration and power that Order of men was in this Land, for some hundreds of years after this Nation had received the *Faith*; and that not by any precarious favour of Princes, or by an ignorant fondness of the People; but establisht their honour was by Law; by which every Priest was accounted *Thani rectitudine dignus*, as appears by the ^a Laws of King *Ethelstan*; (a respect, which I shall neither arrogantly, nor unseasonably communicate unto vulgar ears.) The reason whereof is not only that which our learned *Antiquarie* gives us in his *English Councils* [*Quippe sub his sculis apud ipsos solum esset literarum clavis, &c.*] because the learning of that age was wholly engross'd by some of the *Clergy*; the *Priest* being the *Oracle* of the *People*, as the *Bishops* were of the *King* and *Kingdom*: but there is another, and (perhaps) a stronger reason to be collected

^a*Can ut de rebus regiis, i. e. causis*
^b*utrum estimati*
^o*inibus. Vid. S. H.*
^{Spelman in}
^{epist. ad Reg.}
^{Jac. 1b.}

Gods own Law

b S: quis arrogans pro Episcopi iustitia
emendare noluerit, Episcopus Regi norum
faciat. Rex autem constringat malum factum
ut emendat, cui foris fecerit, scil. primum
Episcopo, deinde sibi, & sic erunt ibi
duo gladii, & gladius gladium juvabit.
Hoveden. Annal. par. post. Hen.
2. p. 60¹. n. 50. Edit. Savil.

collected out of those words, in one of
King b Edwards Laws [& gladius gladi-
um juvabit] from the reciprocate assi-
stances of the temporal and spiritual
swords: Christians then believing, that
there was as much credit to be given
unto those, as to any other words of

our Saviour, Mat. 18. 18. [Whatsoever ye shall bind on
earth shall be bound in Heaven, and whatsoever ye shall
loose on Earth shall be loosed in Heaven.] But this ho-
nour and power, together with the immunities of the
Church, sub Normannicis Regibus nutare capit, says
that c Author; and in the Council of Clarendon under
Henry the second, they received a grievous wound: which
hath more or less continued bleeding ever since: and tis
to be fear'd would have done so, till the spirits of all
Ecclesiastical Jurisdiction had been clean exhausted, if
Experience (which is sometimes the Mistress of wise
men, as well as of fools) had not bound up the wound
with a probatum est, No Bishop, No King.

I speak not this, as if I thought it either convenient, or
necessary, that the Clergy should concern themselves in
matters of civil Judicature: (Pity it were that so
active and learned a Gentry as this Nation is wont to
produce, should betwixt doing nothing, and doing ill
(which would be the certain consequent of that other de-
sign) degenerate from the worth and lustre of their An-
cestors !) that ~~avversiorum~~ or power of self-Govern-
ment, which the Primitive Church did exercise (and
for which, some men of late did so much struggle and
contend,) though it cannot be denied to be lawful,
yet was it cumbersome, and in many cases unef-
fectual.

It could not stand with the Reputation of the Church
of Christ to make appeals unto the Heathen Emperors,
as

c Sir H. S. ib.

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as the *d*Council of *Antioch* was fain to do, under the *af-*
fronts they received from *Samosatenus* the Heretick <sup>d Balf. [ex Eu-
feb.] Synod An-</sup>
after they had *deprived* him. Nor have the *Popes* <sup>d Balf. [ex Eu-
feb.] Synod An-</sup>
themselves been wholly exempt from the like *exigents*,
as appears by one instance for all, by the *supplicatory*
Epistle of *Pope e Boniface* to the Emperor *Honorius*; in
the case of *Schism*, between the *Popes* themselves. So <sup>e Voel. tom. 11.
pa. 213 & Bar.
ad An. Chr. 419.</sup>
unuseful, if not *unsafe*, will be *St. Peters Keys*, (though
hanging at the *Pope's* own *girdle*) if they should lock
up *Cesar's* sword.

The sober and learned Clergy of this Church must needs know, that the *Spiritual Jurisdiction* stands in need of the *temporal power*: and that the *Miter* is only safe, under the *shadow* of the *Crown*. Happy then it is for us, that *Ecclesiastical Dominion* can derive it self into the *same fountain* from whence descends the *temporal authority*: and that (like *f Righteousness* and *Peace*) the *two Jurisdictions*, can *kiss* each other in the *Arms* ^{f Ps. 85. 10.} of *Sovereignty*: that among us, 'tis all one to be our *King*, and to be the *Defender of the Faith*: that the *Sword* is joyn'd to the *Word*, and the *Judge* to the *Priest*.

This *Constellation of Power*, as it is a *Prognostick of security* and *happiness*, to men of *temperate spirits*; so will it prove a terrible *Omen*, to such as *despise Dominion*, and leave their *heady practises* to the *Censure* of *just Laws*, which are the true *Standard* whereby to measure the crimes of *Offenders*; and not the *Opinions* of *Ignorant* and *prejudicate men*; which leads me to the second *integral* part of this Law, *Censura Legis.*

2. Such hath been the *policy* of *Satan*, that taking advantage of the *ignorance*, *prejudice*, *interest*, and *vices* of men, he hath sent some sins up and down the world like *spies*, with *false names*, that might not cause men to *distrust* and *avoyd* them; they were not only *carnal* ^{but}

but spiritual wickednesses, which have wandered about in this disguise, compassing the world like him whose emissaries they are: not only *prava*, but *ira fraude* have on all hands cheated men of their pretious souls; *stellicidia mellis de Labacanculo venenata*, as Tertullian speaks, the Devil having possoned the Limbecks from whence men hoped to have suckt most *soveraign Elixars*: and dealt with the world as *Praxiteles* the Statuary in *g Posidippus* did with the foolish Heathen, made his own *Darlings* to be worshipt by mens fancies, instead of a *Deity*.

g. Clem. Alex. ad. 20. 290-7. p. 29.

But as the judgement of God is according to truth in punishing sinners; so are the sins of men exactly recorded by Him in his *Doomsday-book*, at the approach of those everlasting burnings. *Drunkenness* will not then be called good fellowship; nor *uncleanness* a trick of youth; nor *cheating* a trick of wit; nor *pride*, decency; nor *oppession*, self-preservation; nor *Rebellion*, honesty; nor *faction*, Godliness; nor *Sedition*, standing for the truth; nor *superstition*, devotion; nor *Sacrilege*, reformation.

How light soever it may seem to some in these days to *reject* the just commands of our *Lawful* Superiours in *Church* and *State*, yet *ab initio non fuit sic*: and how it came to pafs, that that which was so grievous a crime among the *Jews* (Gods own people too) should be transform'd into an *herick* Virtue among *Christians*, will want some *Oedipus* to untie the knot.

The Scripture it self bears witness of the hainousness of this Sin, allotting it a place among sins of the *first magnitude*, sins of *presumption*: [*Qui autem superbiens nolens obediens*] So the *vulgar* reads the Text, and before that the *Septuagint* (after the **original*) [*ος ειναι νοιον ειναι παρεια*] and therefore *h Aquinas* doth rightly define *contempt* to be [*nolle subjici legi*] not

כודין

b. 22. q. 86. 9. 3.

to

to submit ones self to just Law, and so *i* peccare ex *com-*^{1 Suu de legib.}
temptu, est peccare ex voluntate non se subjiciendi alteri,^{c. 28. n. 13.}
 to be guilty of the sin of *contempt* is wilfully to refuse
 to submit our selves to them that have a *just* and *lawful*
 authority over us.

This sin is first brooded and hatcht in the understanding ; when that *person*, or *his authority* to *whom* we ought to submit, is *less esteem'd* than *he*, or that ought to be: next it descends into the *inward affections* and *passions* of the *mind* ; and there grows and strengthens it self, from a *desire* and *contrivance* of *opportunities* to express it, and to invite others to the same attempts : and lastly, it comes out, and shews it self to be a *fiery flying Serpent*, ready *fledg'd* and prepared for *action* ; and *discovers* as much by *Overt acts*, as the *Law* calls them ; whereby this *pride* and *malice* of the *heart* becomes discernible to all.

A *Sin* it is, that of all others, carries with it the greatest *provocation* both with *God* and *Man* ; 'tis not (*always*) so much the *thing* that is done, as the *mind* ^k wherewith it is done, that gives unto *this sin* its true *estimate* and *size*. When *God* made *Saul* King, there were *some* that brought him no *presents*, ^l *Sam. 10.* the *Exchequer* 'tis like complain'd not for want of them ; yet the *Holy Ghost* calls thole men, *sons of Belial* ; as ^m *disp. c. 14.* having an eye upon the *venome* that lay in their *hearts* ; they did it not, because they *despised him*. We read of *one* that not long after the *commandement* for observing the *Sabbath* was given, had *gathered sticks* upon *that day* ; and was therefore, by *Gods especial appointment*, *ston'd* to death, *Num. 15.* the *fact* was but small, but his *pride* was great ; he did it ⁿ *co*νερα** too, out of *presumption*, and so fell under their *law* ^o *רִבִּי* their ^p *caninus dis-*
judicium animarum (as the *Jews* call'd it) for *he that de-*
spis'd Moses Law was to die without Mercy, as the *Apo-*
tle

style tells us, *Heb. 10. 28.* and tis the *Sanction* of this Law [even that man shall die] which is our *third* particular.

3. *Laws* have generally in them a *double* power ; *directive* and *coercive* : the *first* describes and appoints the *duty* , the *second* determines the *punishment* to be suffered, if the *duty* be not perform'd. Upon this follows a *double* obligation of the *Subject* by Law: the ^{m Dr. Sander} ~~son prel. 6.~~ *first* is *ὑπακοή*, *Obedience* ; the *second* is *ὑποτακτία*, *Subjection* : the *former* we commonly style *active*, the *later*, *passive* *obedience* : *active* *obedience* is doing the *duty* ; *passive* *obedience* is submitting to the *punishment*, if we do it not.

The *first Positive Law* that ever was made in the world had these *two*, the *directive* and *coercive* parts. *Gen. 2. 17.* [Of the *tree of the knowledge of good and evil thou shalt not eat*] there's the *directive* part : [for in the day that thou eatest thereof, thou shalt die the death] there's the *coercive* part.

These *two* parts of *Law*, have respect to that *two-fold Power*, which is in *every mans soul* ; the *Understanding*, and the *Will* : the *Understanding* is the *Card* and *Compass*, the *Will* holds the *Rudder*, and steers the course of *mens actions* : that *directs*, this *executes*. Now because the *Will* is a *free power*, and may *choose* to do or not doe ; therefore the *coercive* part of *Law* is added, to restrain the *Will* from *evil*, in doing contrary to the *rule of Law* ; for if the *Will* had no *freedom* in her actions, all the *Laws of God and men*, were (*at best*) *impertinent*. *πεινῶνται οἱ ἐνόλαι, καὶ μαλιστὸς οἱ Παῦλος*, &c. as *Origen* truly speaks, and with him *two great Fathers of the Church* in his *n Philocalia* : and *St. Cyril of Alexandria*, of as *good authority* as any, says as much in his *sixth Book de Adoratione in Spiritu & veritate*.

If this were not true, with *Reverence* to your *Lordships*

Of determining Controversies.

13

ships be it spoken, you would return from your *Circuit* with *sins* upon your *consciences*, of the same *colour* with your *Robes*; I mean sins of bloud, *Scarlet sins*, as the *o* Prophet calls them: it being utterly *unreasonable*, ^{o 15. 1. 19.} and therefore *unlawful*, to punish any man for doing that which he had *no power* to avoyd. A *consequence* so inevitable; that some *Phanatiques* in the *close* of the late *troubles*, foreseeing the force of it, refused to assist in their *Councils of War*, because they would not con-cur in *that* mans punishment, whose *actions* (as they conceived) were no more *contingent* and *free*, than the *motion* of a stone, tending to the *centre of gravity*. The effect of which *pernicious* error, was most acutely foreseen by a great *States-man* of ours, for almost an *age* since; as the late *Reverend and learned p Author of* ^{p Part. 1. c. 6.} *the Quinque-Articular History* will inform you. ^{f. 12.}

This *coercive* part of Law belongs to *vindicative* justice, and appoints the *punishment* due to the breach of *each* particular Law; which is not *always* to take its *measure* from the *fact* *materially* considered, but in *conjunction* with the *will*, and other *faculties* of the *soul*. *Intentio est qua dat pricipuam formalitatem in actibus moralibus*, (say the *q Schoolmen*;) the *intention* gives the ^{q Aquin. 12 a. 9.} *formality* to the *sin*; and so creates that difference the ^{72. 1. 8. c. 32.} *r Gloss* observes, *betwixt non parere and contempnere*; of ^{q. 88. 42. 13.} *r c. quia*. ^{Dist. 10.} great importance with *Casuists*, in *stating* the *nature* and *kinds* of *offences* against Law, *in foro interiori*, or in the *conscience*: for *in foro exteriori*, or the *publick tribunal*, there the Law judges of the *intention* by the *fact*, and *not* of the *fact* by the *intention*.

The *formality* of the *sin* we speak of, stands in the *[nolle obedire]* in the *Text*; enough to exact the *great-est* punishment, especially from *such* a Lawgiver, who hath *absolute Sovereignty* over *mens lives*. *Ego occidam, & ego vivere faciam*, says God, *Dent. 32. 39. I kill,*

[¶] V. Soto. de just. & iur. l. 4. q. 2. a. 3. kill, and I make alive ; that is, say ^{*} Expositors, I have the sole original right and authority of taking away mans life ; and therefore Magistrates cannot take away the lives of Malefactors ; or expose the lives of their Subjects to the hazard of just wars ; as having absolute Dominion over mens lives ; but as conservators of the Peace, and publick good. And upon this ground it is, that it is injustice in them, to make Laws, that have punishments annexed unto them disproportionate to the offence committed, especially in the excess ; and from

^f Quoties per ammortis imponebit transgressoribus atieuius legis, maiestatem illius legis suisse gravem, & de se sufficientem ad peccatum mortale, significat. Scot. in 4. d. 1. q. 6. Sic Aug. l. 2. de Bapt. c. 6.

hence it is, that we account it but ^f reasonable, to conjecture what is the quality of the crime, by the nature of the punishment inflicted upon offenders ; the crime here is contempt, the punishment's death : gravis pæna, sed ad vitandum periculum omnium gravissimum, saith the learned and experienced ^t Grotius ; a great punishment, but tis inflicted for prevention of the greatest mischief in the world : you will believe him, if you please to reflect upon the fourth and last integrant part of this Law ; the Ratio finalis legis ; the end why God made this Law, and secured it from the approches of the foot of pride, by so severe a punishment ; and that was, for prevention of Schism ; express here Antonomasticus, [the evil ;] and thou shalt put away the evil from Israel.

4. Schism in the proper notion of it seems to me to be

^u Serm 11. de verb. Domini.

^x Lib. cont. Gen. ιαναίας καὶ

μεχενδίας αλλάζας ἐχροατας θεοντας καὶ πίλας, &c.

a thing not known to the Heathen world. ^u S. Augustine (indeed) and ^x S. Athanasius tells us of many bloody quarrels that hapned amongst them concerning their Idolatrous worship, but me-

thinks there should be no Schism, (at least not properly any) where there is neither truth nor Church. But with Sedition, the younger Sister of Schism, (for Schism seems

seems to be as old as that bloody quarrel betwixt *Cain* and *Abel*) the *Heathen* were so well acquainted, that *Thucydides* gives this true *Character* of the *Monster*, *πόνος ιδία κακογονίας οὐ σάστη κατίστη*, that she it is that hath brought forth *mischiefs* of all *shapes* and *sizes* in the *World*. And *Schism* cannot but be thought so much the more *Superior* to *Sedition*, in the production of *mischiefs*; by how much the more fierce all *quarrels* and *contentions* are, that spring out of *different opinions* in *Religion*: and further, *dissentions* of this kind have, above all others, the strongest *appetite* of *propagation*. *Agresours* in *factions* of *religion*, labouring to have their *names* and *opinions* serve to that same end as *Zisca*, when he died, appointed for his *skin*; who being *Leader* of the *Taborites* (a *faction* in *Bohemia*) commanded that a *Drum* should be made therewith, (as *Dubravius* and *others* tell us) that something of *Zisca* might still be heard to *sound*, in the *Ears* of his *followers*, and their *enemies*.

I shall not *burthen* your *patience* by prosecuting the *common place* of *Schism*, with *infinite* *authorities* out of the *Fathers*, setting forth the *grievousness* of *this* *sin*: it was the *due consideration* hereof, that made *A. 222. q. 9. 2.* *quinas* to affirm *Schism* to be the *greatest* of all *sins*; *3^m.* against our *Neighbour*; and that not only *respectu circumstantiarum*, in respect of the many *circumstances* and *accidents* that attend it; but likewise *respectu speciei*, in regard of its *own* *nature*; because it is the most *contrary* to *Charity*, and the *love* of our *Neighbour*; for it is *contra spirituale bonum multitudinis*, as he speaks; it is against the *spiritual* *good* of a *multitude*: so that we may say of *Schism*, as the * *Women of Israel* sang of *1 Sam. 18. 7.* *David*; if *other* *sins* (like *Saul*) kill by *thousands*; *Schism* (like *David*) kills by *ten thousands* at a *time*. The *Apostle* in his *Epistles* calls it *Heresy*; and if *noscitur ex sociis* be a *good* *Topick*, you may judge what

b D. Prescrip.
adv. Heret. l. 1
c. 6.

what kind of sin it is, by the company amongst which you will find it, Gal. 5. 19. b Tertullian says, that word comes from a Greek Verb signifying [to choose] so that he makes *Schismatics* and *Heretics* to be such as will choose for themselves. The true definition is, *tis a voluntary departure from the government of our lawful Superiors, and a refusal to communicate with our fellow-members, with a design of drawing followers after us.* This is that *poisoned Arrow* which the *Romanists* would fain *dart* into the *sides* of the *Church of England*, and therefore make the *formal reason of Schism* to consist in a *voluntary departure* from the *Pope*, as being Christ's *Vicar* here on earth: but *non habet lateri lethalis arundo*; we are yet to be convinc'd that the *Pope* is Christ's *Vicar* here on Earth, though we will not deny him to be *St. Peters* *successour* in *Rome*. And as for our *voluntary* *departure* from a *dependency* on that *Church*, we have done *no* *more*, but asserted that *just* *right* we had to *govern* (and by consequence to *reform*) our selves, by the 28. *Canon* of the fourth *General Council*: wherein *ἰσα προβῆται*, equal privileges with *Rome*, were granted unto *Constantinople*, *διὰ τὸ σχῆμα μετασείσιν*, (for so d *Alexius* *Ariphilus* truly abbreviates that *canon*) because the *seat* of the *Empire* was *transferr'd* from *Rome* to *Constantinople*: how much rather do the like *equal privileges* belong to *us*, who have

d οὐκ εἴς τις ὅπλοντος Ρώμης τῷ τῆς παλαιοτέρης ὅμοιας τοις, διὰ τὸν ὅμοιον σχῆμα μετασεῖν. Alex. Auct. in Synops. Can. 28.

not only *translated* the *seat*, but the *Empire* too, (I mean of our selves) from that *City*, of whose *vast* *Dominion* this *Island* was sometimes a *part*? But I return.

This is that sin which God designed this Law to prevent, as a most *intolerable evil*: for without a power to determine *Controversies*, that should arise amongst

a seeking and scrupulous party, it is not in the power of man to do it. And being therefore that it is Gods manner, *e res humanas conservare modis humanæ nature congruentibus*, to conserve the affairs of men, by ways & means agreeable to mans nature; and being that others besides the State and Church of the Jews, are liable to the like distempers and confusions; we may reasonably conceive it, not unfit to be examined, whether this Law may not be revived by Supreme Authority; which is my second Disquisition.

2. The Respect of the directive part of this Law, is all that we inquire after; for, as for the coercive part thereof, we re-inforce it not; *hoc nunc agit in Ecclesia Excommunicatio, quod agebat tunc interfictio: Excommunication among Christians* (saith f S. Augustine) *is* ^{Quæst. sup.} _{D. u. l. b. 5. 38.} many cases commutes for temporal death under the Law; and let this be one of them.

But for the directive part of this Law, why it may be revived by Supreme Authority, there be these Reasons producible, and fit to be soberly weigh'd by all that have a true Christian temper of mind in them.

1. First, because the same thing was put in practise by the Apostles themselves, for prevention of the same evil, *Acts. 15.* for certain men which come down to Antioch from Judea, having taught the Brethren and said, except ye be circumcised after the manner of Moses ye cannot be sav'd; the Apostles and Elders came together for to consider of this matter, v. 6. And having made a Decree concerning the point in controversy; how religiously it was observed, not only by Christians of that Age, but for more then 300 years after, g Tertullian in his *Apology*, h Origen against Celsus, i Eusebius, k Cyril of Jerusalem, l St. Austin,

^g In *Apolog.* c. 9.

^h *Contr. Cels.* lib. 8.

ⁱ *Eccle. Hist.* l. 5. c. 1.

^k *Euseb.* 4.

^l *Epist. 154. ad Ptol.*

and

^m Ep. 79. ad Nic. and ^m Leo will inform such as please to enquire.

2. Secondly, because the following *Councils* did never doubt of the *like power* in themselves, as oft as they came together, for determining questions of *faith*, or ⁿ *Apud Balsam. practise.* I shall only instance in the 6. n *Canon* of the third General *Council*, which pronounceth an *Anathema*

^o In *Synop. Can. conc. Ephes. c. 4.* ρ μεγάλη διαφορα εἰς ἐναντίων, καὶ τὸ ἀμφιβάλλειν τινὰς τοιούτους περιγράμματος, ib. ερμ. on whomsoever should διαδίποτε τέτοια παρεσταλείν (which ^o *Aristinus* reads by διπλοφθαλμῶν τῆς σωμάτων, and ^p *Balsamon* expounds by ἀμφιβάλλειν) should but hesitate or doubt of, as well as oppose the *Decrees* of that *Council*.

^p Vide *civil. Alex. δια. πρὸς τινάς εἰς τὸν Κων-σαντ. κακό.* Now the *Council of Ephesus* we all know, met for determining a *dispute* about the *person* of *Christ* : for ^p *Nestorius* had affirm'd and taught, that the *blessed Virgin* was not the *Mother of God*, but of *Christ* : from whence a *duality* of persons must needs be inferr'd to be in the *Son of God* ; and by *consequence*, that there was not a *Trinity*, but a *Quaternity of Persons* in the *Divine nature*. The *Council* did (as they needs must) determine against *Nestorius* ; which determination though undoubtedly true, yet because it was a *consequence* drawn from *Scripture*, by the *mediation* of humane understanding, and the *Council* did so *severely* oblige *all* the *Church* to receive it, it must follow, that the *Council* had a *full assurance* of her *power* to define matters in *controversy* ; and to oblige the members of the *Catholick Church* not to reject her *determinations*, under the pain of *Anathema*. The *argument* is of such weight in the judgment of the great ^q *Cardinal*, that he sticks not to conclude an *Infallibility* of the *Church* from thence. I stretch it no further than to infer à *majori ad minus*, that, if there were a *power* in the *Church*, that under so *grievous* a punishment, could exact the *reception* of her *Decrees* in points of *Faith* ; much more may

^q *Bel de Conc. lib. 2. c. 4.*

may the same Authority require obedience to her determinations in smaller (because practical) things.

3. A third reason is; because it is absolutely necessary, that all publick Societies, whether Ecclesiastical or Civil, be furnished with all necessary means to preserve themselves from those evils, which are apparently destructive of all governments: which evils are such as doe inevitably produce discord, divisions and separations amongst the members of the same community; the only Remedy whereof, is an Authority and Power in the Governours, to hear and to determine all Controversies, and to bind the contending parties to acquiesce in their determinations.

Not as if I thought, that a man were bound to believe every thing to be true, or best, that should be so determined: for this great Council of the Jews were not infallible, nor needed so to be; as appears by that Offering which God appointed to be offered, when the Congregation had trespass'd through ignorance, Lev. 4. 13. But, that the members of Church or State may be bound non contra agere; not to do that which is contrary to a definitive sentence.

It is sufficient that in *materia probabili* (the common subject of humane Laws) there be a moral certainty in our Superiors, of the truth or goodness of what is thus defin'd: which is enough to oblige Inferiors to obedience; the Casuists rule holding good in this point [*si res sit dubia, primumendum est pro Legislatore;*] reason, modesty and humility, nothing dubie (and that must be demonstratively) appearing to the contrary, will (at least) admonish us, to think the judgement of the Law-giver the best and truest.

4. A fourth Argument is; because it is a thing unreasonable to affirm or imply, that Government under the Gospel should be left in a worse, and inferior condition

v. 2 Cor. 3.8. dition to the state of it under the Law ; & St. Paul having advanc'd the ministratiōn of the Spirit, above that of the letter ; that is, the *oeconomie* of things under the *Gospel*, above that they had under the Law ; of which things *Government* cannot be understood to be so *inconsiderable* a part , as to be excluded from having any *share* in that *Evangelical Prelatiōn* ; which yet must *inevitably* follow ; if the same *diseases* remaining in the *body politick*, the *Governours* thereof should be debarr'd the use of the like *Remedies* : I mean, if *Christians* shall be (at least) as liable to *faction* and *Schism*, as any *Jews* whatever ; and yet the *highest* authority amongst them , be not allowed *sufficient* means to *prevent*, and *restrain* men from *Innovatiōns*.

Add hereto, how *ridiculous* a thing it must needs appear to be, that men *concern'd* in *Government* , should frequently *meet*, and *consult* about making of *Laws*, for such as had arm'd themselves against all *force* of *Authority* with *this Principle*, viz. that they were *bound* to receive no *Laws* , further than should stand with their *own* good liking and *approbation*. By which means it must come to pass , that it would be the task of the *Magistrate*, not so much to contrive *Laws* that might promote *Truth*, *Peace*, *Justice* and *Virtue* amongst men , as *so to model his Laws*, as mought best secure, both *himself* and *them* from *contempt*.

Ob. It may (perhaps) be objected, that there is a wide difference betwixt what God *imposeth*, and what men *injoyn*.

Sol. To this I answer first, That it is to be observed , that God doth in *this Law* bind the *Jewes* to follow , not what *he himself*, but what their *lawful* *Superiors* (the *Priest* or *Judge*) should *define* ; to whom likewise he had not promised any *infallible* *assistance*, but

but on the contrary, had left them to the best use of their reason, which at best may erre: and when actually it did erre, yet were the *Jews* bound to follow, and not to dispute, the (but) erroneous determinations of that Council that sat in *Moses* Chair.

And secondly, That the Law of God doth not exceed the just Law of the Church or State, in respect of the obligation, though it doth so in respect of its stability; the reason is, because the obligative force of Law, is from the essence or nature of Law, and is the necessary effect of Law. The Law-giver doth not give to Law its essence, but its existence; he may choose to make this or that particular Law, but when he hath made a Law, that Law hath its force from its own specifical nature; for, that Law should bind, is *quid eternum & immutabile*, it is an eternal and immutable, because it is an essential property of Law.

5. Lastly, The revival of this Law is not opposite to Scripture, nor is the Scripture an adequate rule for all such things as are to be done by us in our several places and callings; from whence it must needs follow, that the multitude must stand in need of direction and determination, either from themselves, or from others, in many particular cases.

Let no man think much that I have said, that the Scripture is no adequate rule for particular actions; for if this were not true, it must follow (as the late ⁵ Dr. Sanderson _{Praef. 4. Sicc.} verend and Learned Bishop of Lincoln observes) that such as never had the *Scriptures*, never had any rule for particular actions; which is not only contrary to experience, but to that of the *Apostle*, Rom. 2. 15. where he tells you, that the *Heathens* who had not that Law which God gave unto the *Jews*, did govern themselves in particular moral actions, by that Law which was written in their hearts.

A principal but not an adequate rule of moral actions, we must acknowledge the *Scripture* to be; and therefore, as the *Law of nature* (by reason of its generality) doth stand in need of a *Supply*, which it hath from the *determination* thereof, by *particular humane Laws*; so the *Scripture*, by reason of its *generality* (though not for *that* reason onely) doth stand in need of a *Supply*, from *particular rules* of *particular actions*.

For in moral actions these two things are to be considered; *First*, The *principal rule* by which they are to be *governed*; together with the *principal end* unto which they are to be *directed*; and so the *Scripture* is a *rule* of all our *moral actions*, *directing* us to do all that we do in *Charity*, for *edification* of our *Brethren*, and for the *Glory* of *God*. The *second* thing, is that *immediate* and *adequate rule*, whereby the *action* we are about to do, is to be *govern'd*; and *this* (as it is not *necessary* that it should, so) the *Scripture* doth not *prescribe*; but, as in things left unto our *own choice*, we *govern* our *selves* by *that rule* we *esteem best*, or *good*: so, as we are members of the *Church* or *State*, *Reason* cannot but tell us, that in *particular actions*, our *understanding* as well as our *will*, may stand in *subordination* to *such as have a right and authority to govern us*.

Dissenters will easily be *convinc'd* by an *instance* in both. These *Reverend* and *Honorable Persons* (my *Lords* the *Judges*) have for performance of their *duty*, *this rule* of doing it from *Scripture*, *Deut. 1.16.* [Hear the *causes* between your *Brethren*, and judge *righteously* between every man and his *Brother*] *this is the Principal rule* of that *action* their *Lordships* are now upon; but the *form*, *manner*, *time*, *place*, yea the *very rule* of judging *righteously* between every man and his *brother*, is not *prescrib'd* in *Scripture*, but by the *Laws* of this *Land*,

Land, unto which their Lordships hold themselves bound to conform, as the adequate and immediate rule of their consciences, in administering justice in this Nation.

The like instance I shall crave leave to give in a matter of exceeding great concernment to us, as we are members of this Church, and owe obedience unto his Majesties Ecclesiastical Laws. It is the command of our dear Saviour, our Lord and Master Jesus Christ, that the Sacrament of the Lords Supper be received often, in remembrance of his most pretious death and passion, and for the actual application of the benefits thereof unto the worthy Receiver; and that this be done with such reverence and preparation, as becomes so holy and dreadful a mystery; but the gesture, time, place, manner, and other circumstances, are not prescrib'd by Scripture, but left in the power of the Church to determine (who hath the standart and rule of decency in her hands) *ni si forte tantum Sacramentum minus decent ordo, quam confusio*; unless that Sacrament be the onely thing that is best set out by disorder and confusion, as t Bellarmine smartly (if justly) replies upon the *Centuriators*, and the *Apostle* himself hath confuted with ^{v de Rom. Pons.} 1. 4. 6. 8. Judgements from Heaven, *1 Cor. 11. 30*.

Ob. But here it will be objected, That if this be granted, Christian liberty would be no more but an empty name; and thousands of good Christians must hold themselves bound to submit unto such Laws, as are not agreeable to their particular consciences, which were to lose the fairest Jewel in the Crown of Reformation.

Sol. To this I say, God forbid but that every good Christian should have a due regard unto such things, as lye in common unto the whole profession, as Liberty and Conscience do; but we must remember, that *non plus nomini, quam veritati tribuendum*, that we do not sacrifice truths to titles, and things to names.

Liberty

Liberty is a word that the whole world (in a manner) first learnt from *Luther*, as that which dropt from *Heaven* into his *arms*; though many of his *words* and *actions* (applauded and imitated both then and since) could not be *warranted* by his *very large Commission*. I mean it not so much of his burning the *Corpus Juris Canonici* in the *publique Market-place*, in token that he had set *all* the world *free* from *Laws* (which he did thereby as *truly*, as *Xerxes* bound the *Hellefpon*, when he cast a *chain* therein), but rather of his *contemning* and *reviling* the *Civil Magistracy*, on whom in his book *de potestate seculari*, he bestows this *Character*, *sunt communiter maxime fatui, & pessimi Nebulones super terram*; which amongst other worse (if there could be worse) expressions, rendered him *obnoxious* amongst his *enemies*, to that sharp *invective* in the *Diet at Worms* [*Exlex homo, leges ipsas omnes dannat, &c.*] and made his friend *uGesner* doubt what would become of that *prodigious liberty*; *faxit Deus*, says he, *ne contentione & impudentia oris, obfit Ecclesia sua*. *Twoaks of unjust servitude may sometimes be broken*, but Christians must not fling the *Pieces* of them in the *face* of *supreme authority*.

But as for *Christian liberty*, I shall say in one word, that it is best known by its *contrary*, and that is, by that *Spirit of bondage* which was in the *unconverted Jews*; so that *Christian liberty* is no more but a *freedom* from the *burden* of the *Ceremonial*, and the *curse* and *rigor* of the *Moral Law*; from the *guilt* and from the *Law of Sin*; from the *fear*, and from the *power* of *Death*. This I take to be all that can be found in the *Scripture*, which is the Christians *Magna Charta*, the great *conservatress* of his *Liberty*. Laws therefore that preserve *Order* and *Decency*, and keep men from falling into *sin* (the *onely vassallage* of a *Christian*) can by

u Con. Gesn. in universal. biblioth.

by no means infringe, but rather advance Christian Liberty.

As to the later part of the *Objection* that concerns *private conscience*, supposed in some to be oppressed by such Laws, to which others may as *innocently* as *willingly* submit, I answer, that it may justly cause all sober men to suspect, that there is some error and *fascination* in that opinion; *Conscience* of late, having justified the *Jews* miraculous Fable of their *Manna*, namely, that it had the taste of that which *every one* best lik'd; *flesh* to one, *fish* to another, and *fruit* to a third.

Certainly men ought to be very jealous over the *importunities* of their *Consciences* against *publike Laws*, when they shall reflect upon the *miserable delusions* of those *Miscreants* amongst us, who having *besmeard* themselves with the blood of their King, should dare *publikely* to *justify* (in the very face of *Death* and *Judgement*) so *grievous* a *Crime*, from the *dictates* of their *private Conscience*, and *their following of God*, as they term'd it. Which last *blasphemous* expression will not suffer me to leave you unacquainted with that *remarkable Caution* for *all* in *Authority*, which fell many years since, from the *Divine Pen* of that *incomparable* x *Hooker*, Impossible (faith he) it is, that ever the wit of man should imagine, what will grow out of such errors, as go mask'd under the Cloak of divine Authority, till time have brought forth the fruits of them: for which cause it behoveth *Wisdom* to fear the sequels thereof, even beyond all apparent cause of fear.

x In prefat.
S: Ch. 8.

But to speak something that may comport with the remainder of my time concerning this *Objection*.

This *maxim* must first be laid down, as an *unquestionable Truth*, viz. y *Contra omnem relictitudinem est, bonum commune ad privatum ordinare, sentatum ad par-* y *Suar. de Leg.*
tem. l. 1.

tem propter ipsum referre. Law-givers judge what is fit for the common good; and unreasonable it were to stoop that unto private interests and respects. Supposing then that some Laws may appear contrary to some particular mens Consciences; What shall be done? obey contrary to their judgements, or disobey those Laws for conscience sake?

For answer hereto, give me leave to say, first, That there is no contrariety betwixt a *just* Law, and a *good* Conscience. That Law is undoubtedly a *just* Law, in which there is a concurrence of the justice of these four causes of Law, wherein the whole of it doth consist; That is to say, the justice of the final, efficient, formal, and material causes of Law. 1. It must be for the common good. 2. The Law-maker must have a true legislative power. 3. The matter of the Law must be *good*, at least *indifferent*. And 4. lastly, It must have the right *form* of Law, i. e. it must be a *rule of rectitude* for *humane actions*. Such a Law doth necessarily oblige them to whom it is given; nor can it possibly be *contrary* to a *good Conscience*; because such a Law is conform to *right reason*, as *right reason* is conform to the *Law of Nature*; and the *Law of Nature* to that *eternal Law* in the *minde* of the *Divine Essence*.

Let me give an instance or two. This is the *Law of Nature*, and to this *right reason* is conform, viz. That *men live temperately*. This Principle considered by the *Law-makers*, they judge it fit to make a Law, prohibiting the eating *some* kinds of meats, as of *flesh* in the *Spring* or *Lent*, that thereby (amongst other reasons) *Christians* might shew their *temperance*; which is not onely an *abstinence* from *excess* in the *Quantity* of *all*; but, in regard of the *Quality* of *some* meats, as appears by *Daniel's fast*, in the 10. of that *Prophecy*,

phesy, ver. 3. Such a Law as this, cannot be *contrary* to a good conscience, because it is appointed for the practise of a *noble* Virtue, to wit, *Temperance*.

Again, as to the case in hand. This is a *rule* in the Law of Nature, That *such as are Governors of others, use all prudent means to prevent Sedition and Schism in the Church and State*. Now if *Law-givers* are morally assured, that *this* cannot be done, without *defining some things under dispute amongst their Subjects, and exacting from all a submission unto that rule*, which they shall prescribe by *Law*, and shall thereupon *injoyn an uniformity of practice unto all the community*, such a Law cannot be *contrary to a good conscience*; the reason is, because the *submission* thereunto is an *actual exercise* of the *Virtues of humility, obedience, charity and sobriety*. So, that unless to practise even *Cardinal Virtues*, be *contrary to a good conscience*, There is no *contrariety betwixt a just Law, and a good conscience*.

2. I answer secondly, That it is the opinion of many learned men both *Divines* and *Canonists*, *That he that submits unto a just Law, though contrary to his own judgment, is not thereby guilty of sin*. The reason I conceive to be, because no man is guilty of sin, in *doing* of that, which God *expressly commands him to do*. Now it is Gods *express command*, that *Subjects obey their lawful Governors*, not onely *for fear of wrath*, i. e. *punishment*, but likewise *for conscience sake*, i. e. that by their *obedience* they might avoid the *guilt of sin*, *Rom. 13.5.* which *obedience of Magistrates*, it is *impertinent* for any one to say he performs, that *refuseth to obey the just Laws of such as God hath plac'd in authority over him*.

Some (indeed) have thought, that there is a *middle course* to be taken in *this case*, and that *willingly to submit to the penalty of the Law*, is *sufficient to dis-*

E charge

charge the *conscience* from all guilt of disobedience. The reason of this assertion is, because there is this rule in the Law [*Etsi non potest infligi pæna sine causa, potest tamen sine culpa*] there may be no fault for which a punishment may be inflicted, but there must be some *cause*.

This I acknowledge to be the judgement of some excellent *Divines*; but withall, it is to be observed, that they confess it holds true, *only* in that *sort* of Laws which the *Canonists* term [*Leges purè pænales*] Laws *purely* penal; but it extends not unto [*Leges mixtae pænales*] Laws of a *mixt* nature.

But, as those Laws which are *purely* penal, are very few, as appears by that Character of them which ^b *Sua-
verbi legis par rez* gives us; so are they not *such* Laws of which we ^b *Sua-
verbi legis par rez* now treat; for these are both *moral* and *penal*; and in *natur* *sufficien-* ^b *in ter proprium* *this case*, to undergo the *punishment*, doth *not* discharge *præceptum obli-* the *Conscience* from the *guilt* of *sin*: the reason is, *qans ad actum*, because there is a *double* *obligation* in every *such* *Law*; *vel omissionem*, *eius, præsumen-* ^b *it binds either to do, or to omit some moral act*; and it *autem, esse ele-* ^b *binds likewise to undergo the punishment, if that act be
gem purè pæna-
lem. Suar. de
Leg. I. 5. c. 4. Law.* For it is a *true rule*, that *omnis præceptio obligat
ad culpam*; every *just* command of our *lawful* *Superior*, leaves a *guilt* upon the *conscience* of him that *refuseth* to obey.

Now this is an *hard* *case* you'll say. So *hard* indeed, that I solemnly profess, that it cannot sink into *my* *understanding*, that our *merciful* *God* ever intended, that men should be reduc'd into such *horrible* *perplexities*, as *this case* imports: for *nulla est necessitas delinquendi, quibus una est necessitas non delinquendi*, saith *c Tertullian*; and the *case* may be *such*, that a man may *not* be able to *suspend* his *action*; and then, *sin* he must whether he *do*, or *not do* as he is commanded.

How-

* However I shall not be peremptory and *Magisterial* in a point of such infinite importance (as by the *erroneous* doctrines and *imaginative* practises of men, the same is now become) *veris nitimus & verisimilibus non contradicimus*, as the great *Historian* speaks. *Reliance* I would have only on *Truth*; but things so likely to be true, as that *first* opinion is, I shall not *contradict*. If *obedience* unto Gods *command*, be a *good Warrant* against *all*; methinks it should be *so*, against *our selves*; and that upon these *two or three* considerations, which I shall humbly offer unto all *such Christians*, who, as *themselves* complain that they have *tender consciences*; so their *brethren* have not had cause given them to complain, that they have had *hard hearts*.

1. *First* I shall desire every *such Christian* to consider, whether it seems not *unreasonable* to affirm, That there is in the soul of man a *power*, invested with a *capacity* of binding the *Will*, from *obedience* of *just Laws*, because the *end* of all *Government* is hereby wholly frustrated and *taken away*; which is the *preservation* of *peace, virtue, and love* in the whole *community* (whether of *Church* or *State*) by an *uniform* *obedience* of the *same Laws*, from the *obligation* whereof, *conscience* is supposed to set *all men equally free*; and thereby to become the great *Palladium* of *Sedition, Heresie, Treason*, and what not; whereof I wish there were no *argument* to be summon'd against the *Gain-sayers*, from *fresh experience* of *these evils*.

2. *Secondly*, there must needs follow from *thence*, an *odium* not only upon all *such Laws*, as *such men* shall esteem *unjust* (how *just* soever they be) but also, upon the *very persons* of *Princes*, and of all *inferior Magistrates*, that shall put *such Laws* in *execution*. And what think you will become of that *Prince* (if *means* and *opportunity* should offer *themselves*) who shall be *esteemed*

2. *Persecutor of his People for conscience sake?*

3. *Lastly, I shall leave it to the consideration of the learned, whether the opinion of d Brentius, viz. That the Magistrate hath power to bind the conscience in cases that concern Religion; and yet that his subjects must not submit thereto, without approbation of their own judgement; whether this opinion (I say) doth not interfere, and is of most dangerous consequence to the Peace and prosperity of Church and State; which yet is that same opinion, which hath taken (by what means I know not) too strong and deep rooting in the minds of many men, otherwise good and virtuous persons.*

For conclusion of this point. Seeing therefore that 1. The Apostles themselves have defined matters in *debate and controverse* in the *Church*, for prevention of *Schism*; And 2. That *National and General Councils* have done the like, as conceiving themselves duly *empowered and obliged* thereto. 3. That it is *necessary* unto all *Governments* whatsoever, to be *furnish'd with all means* that may preserve them from *certain ruin and destruction*. 4. That *things that concern humane Affairs*, are not *under the Gospel*, in a condition *inferior* to that which they had *under the Law*. 5. That the *revival* of this *Law* is *not contrary* to *Scripture*, nor the *Scripture* an *adequate rule* for *particular actions*. And lastly, That *liberty and conscience* duly considered, *receive no prejudice* by this *Law* of *defining points* under *debate*, and thereby imposing an *end* unto *controversies*.

I conclude, That this *Judicial Law* (as to the *directive part of it*) *may be revived by Supreme Authority*; and in the

Third and last place, I humbly conceive it to be of force in this *Government*, as a *fundamental* thereof, and that for these *two or three* reasons, which I shall mention in a *word*, and so disburden your patience.

1. *First*,

*d In Praelegom.
ad P. Soto.*

1. *First*, because the state of this Church and Commonwealth ought no more to want any of those means, which are necessary to her preservation, than any other Church or Commonwealth in the world; and therefore God having declared, that a power of defining matters in debate, was necessary to the being and flourishing of his own Church, and Kingdom amongst the Jews; the Government of this Church and State, cannot be reasonably thought to be divested of that power.

2. *Secondly*, because the Crown of this Realm is an Imperial Crown; the same which *Vulcatius Gallicanus* calls *e Imperium justum*; which implies, that as it is *e See C. L. ubon. not. in Vulc. G. L. n. 10. p. 199.* independent from any other but God alone; So it can-
not be conceived to want any thing that belongs to an absolute and independent Government; and therefore is inseparable from such a power we speak of; there being inherent in this Crown, not only a temporal, but an Ecclesiastical Dominion, such as our f Church af- f At. 37. firms to have been in the Kings of *Judah*; and which was likewise in the Roman Emperors, as appears by that title of *Pontifex Maximus* derived unto them, together with the Empire; and which was retain'd by Constantine and his successors, until g Gratian's time, who first g Z. sim. l. 4. of all devested the Imperial Crown of that title, and thereby opened a way for *Maximus* to bereave him of his life. Let Princes think on that bloody but witty con- ceit of b *Symmachus* (the Heathen Praetor of Rome) and h *Biron. ad an. Cn. B. 383.* then consider, what it is to part with Ecclesiastical Do- minion [*Si Gratianus nolit esse Pontifex Maximus, brevi erit Maximus Pontifex.*]

3. My third and last reason is founded in equity; be- cause the subjects of this Realm have not only an in- terest in making those Laws whereby they are go- vern'd, but likewise a right to interpret those Laws when made; if becoming doubtful, by reason of some

i. 1. *Prefat. ad interpretatio Legum ordinariè Reverendos Judices*
 lib. 4. *Regniq; sapientes spectat, &c.* (as saith Judge *i. Cook*)
 though the expounding of the Laws doth ordinarily belong
 to the Reverend Judges and Sages of this Realm, yet in
 case of greatest difficulty and importance, to the high
 Court of Parliament. In which Court of Parliament,
 the people of this Nation having their Representatives,
 it must follow; that Equity will oblige them to stand
 to their own Act; as being done in that Great Council,
 wherein are both the Priest and the Judge; and from
 which lies no Appeal. A doctrine (surely) which now
 deserves a better regard, than when it was (for many
 years together) the *Palpit-aphorism* of three Nations.

I shall conclude with a special direction of a few words
 to all, as their Places, Callings and Opinions, may be
 duly thought to concern them, in the design of this Dis-
 course; which the Searcher of all hearts knows, to be
 the product of that sincere love, which I have unto all
 my Christian Brethren, and unto the peace and welfare
 of that Church and State in which we live.

And the words shall not be mine, but they shall be the
 words of the wise, which (I trust) will be as goads, and
 as nails fastned by the Masters of assemblies.

Ecccl. 12. 11.

1. And first for such as are Dissenters from this point;
 I shall leave upon their thoughts that milde and pious
 exhortation of the judicious Hooker, in his Preface to his
 unanswerable *Treatise of Ecclesiastical Policy*.

The best and safest way for you my dear Brethren (says
 he) is, to re-examine the cause you have taken in hand,
 and to try it even point by point, argument by argument,
 with all the diligent exactness you can, to lay aside all gall
 of bitterness, and with meekness to search the truth.
 Think you are men, deem it not impossible for you to err:
 sift impartially your own hearts, whether it be force of
 reason,

reason, which hath bred and still doth feed these opinions in you. If truth doth any where appear, seek not to smother it by glossing delusions, acknowledge the greatness thereof, and think it the best victory when it doth prevail over you. Far more comfort it were for us (so small is the comfort we take in these strifes) to labor under the same yoke, as men that look for the same eternal reward of their Labors; to be joyned with you in indissolvable bonds of love and amity. To live as if our persons being many, our souls were but one; rather than in such dismembered sort, to spend our few and wretched days, in a tedious prosecution of wearisome contentions, the end wherof (if they have not some speedy end) will be heavy on both sides. Experience hath made the Prophecy observable.

2. For these honorable Gentlemen whose concernment in Church and State are now allied, and twisted by his Majesties favor, unto one and the same common end, to be procur'd and advanc'd by the same common trust of power; of which I may say as Alexander in *k Cnrtius* did of his marriage with *Darius* his Daughter; that it was done by him, *ut hoc sacro fædere omne dis-* k L. 10.
crimen vici & vicit excluderet; I shall only minde you of that advise the late Wise and Pious *1 King* gave EIK. BAE.
unto his *Son*, his *Majesty* that now reigns. *Let nothing* p. 238.
seem little or despicable to you in matters which concern Religion and the Churches Peace, so as to neglect a speedy reforming and effual suppression of Error and Schisms; which seem at first but an hand-breadth, by *Seditious Spirits, as by strong winds, are soon made to cover, and darken the whole Heaven.* I press you not to extremities: God forbid! Neither prudence nor *Charity* allow such courses; the *State* of this *Church* resembles that in *St. Austin's* time; and therefore we may all say as *m he did*; *Non in Lib. cont. Do-*
tamen ideo Ecclesiam negligimus; sed toleramus que nat. c. 20.
nolumus, ut perveniamus quo volumus.

To you (my Lords the Judges) I shall conclude, with an humble desire that your Lordships will be pleased to reflect upon a few words of the Oracle of the Law; I shall give you them in his own language out of that excellent

n. 1 b in Praefat. n Preface, to the fourth Book of his Reports. Non de-
A Prince caught not to suffer bet Princeps ferre suarum legum ludibrium. Quin &
his Laws to sapientia misera & luctuosa experientia (quod ali-
be come a laughing-stock; And wo- nervous omnes intenderunt, linguisque exacutèrunt, ut le-
tus & full experience gibis hisce scandalum aut calumniam imponerent, nefar-
hath often taught (which rium aliquod crimen aut commisisse, aut fuisse machinatos,
I my self have ideoque leges odisse, quia justam censuram, & gravem
sometimes ob- plagam metuérunt. My Lords, * You know the man and
served) that his communication.
men that have

strained their wits, and stretched their tongues to scandalize or calumniate these Laws, had either practised or plotted some heinous crimes; and therefore hated because they feared the just sentence and heavy stroke. * *2 K. 9. 11.*

Let me add but a word more. Amongst the Jews
Exod. 21. 29. God made o this Law, That, If an Oxe were wont to push with his horn in time past, and it hath been certified to his owner, and he hath not kept him in, and he hath kill'd a man or woman; the Ox shall be ston'd, and the owner also shall be put to death. The words (my Lords) have a tropological sense; tis obvious, and I shall leave it to your Lordships wisdom to apply it.

And lastly (that I may knit both ends of my discourse together) I shall conclude to, and for all, in the words of Holy David, *Psalm. 19.* Lord keep thy servants from presumptuous sins, lest they get the Dominion over us, so shall we be undefil'd, and innocent from the great offence.

T H E E N D.

